

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY WARSAW

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E.O. 11652: N/A

ATTN: HARRY KOPP

REF: WARSAW 4334

ARTICLE 8 OF THE PRESENT DRAFT TAX CONVENTION PROVIDES THAT BUSINESS PROFITS OF AN ENTERPRISE OF A CONTRACTING STATE SHALL BE TAXABLE ONLY BY THAT CONTRACTING STATE UNLESS THE ENTERPRISE CARRIES ON BUSINESS IN THE OTHER CONTRACTING STATE THROUGH A PERMANENT ESTABLISHMENT SITUATED IN THAT OTHER CONTRACTING STATE. IN ADDITION, ARTICLES 15 AND 16 GENERALLY EXEMPT PERSONAL SERVICE INCOME OF A RESIDENT OF ONE CONTRACTING STATE FROM TAXATION BY THE OTHER CONTRACTING STATE UNLESS THE RESIDENT IS PRESENT IN THE OTHER CONTRACTING STATE FOR MORE THAN 183 DAYS. ARTICLE 2 LISTS THE VARIOUS TAXES TO WHICH THESE EXEMPTIONS ARE APPLICABLE.

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IN VIEW OF THESE PROVISIONS, THE TROUBLESOME QUESTION

THAT ARISES IS WHETHER THE POLISH TURNOVER TAX IS AT LEAST IN THE CASE OF COMMISSION AGENTS IMPOSED IN PLACE OF THE POLISH INCOME TAX. THE U.S. DELEGATION IS CONCERNED ABOUT THIS QUESTION ONLY TO THE EXTENT THE TURNOVER TAX IS ASSESSED IN SITUATIONS (1) WHERE THE CONVENTION REQUIRES EXEMPTION FROM THE INCOME TAX AND (2) WHERE THE TURNOVER TAX WOULD NOT BE ASSESSED IF THE INCOME TAX WERE APPLICABLE. OF COURSE, IF SUCH SITUATIONS EXIST, THE EXEMPTIONS REQUIRED BY THE CONVENTION ARE IN EFFECT NULLIFIED.

SINCE OUR REQUEST FOR SPECIFIC EXAMPLES ON THE MANNER IN WHICH THE POLISH INCOME AND TURNOVER TAXES INTERACT UNDER THE ORDER OF THE MINISTER OF FINANCE OF NOVEMBER 2, 1973 HAVE NOT BEEN ANSWERED BY THE POLISH DELEGATION, THE U.S. DELEGATION IS STILL UNCERTAIN AS TO HOW TO RESOLVE THIS PROBLEM. THEREFORE, THE U.S. DELEGATION REQUESTS THE POLISH DELEGATION TO RESPOND WHETHER THE FOLLOWING ACCURATELY DESCRIBES THE OPERATION OF THE POLISH TAXES:

IN THE ABSENCE OF A TAX CONVENTION, A U.S. COMMISSION AGENT WITH NO OFFICE OR FIXED PLACE OF BUSINESS IN POLAND IS SUBJECT TO THE POLISH INCOME TAX ON HIS COMMISSION INCOME FROM POLISH SOURCES, BUT IS NOT SUBJECT TO THE POLISH TURNOVER TAX. IF THE PRESENT DRAFT TAX CONVENTION APPLIES, SUCH A COMMISSION AGENT WILL BE EXEMPT FROM THE POLISH INCOME TAX BECAUSE OF ARTICLE 8, BUT WILL BE SUBJECT TO THE POLISH TURNOVER TAX.

IF THE PRECEDING PARAGRAPH DOES NOT ACCURATELY DESCRIBE THE OPERATION OF THE POLISH TAXES, THE U.S. DELEGATION REQUESTS THE POLISH DELEGATION TO DESCRIBE SPECIFICALLY AND IN AS MUCH DETAIL AS POSSIBLE HOW THE POLISH INCOME AND TURNOVER TAXES WOULD BE APPLIED IN THAT SITUATION.

WITH RESPECT TO ENTERTAINERS, THE SUGGESTION OF BONIUK IS ACCEPTABLE IN PRINCIPLE, BUT IT IS IMPORTANT TO KNOW WHAT PROPORTION OF THE JOINTLY IMPOSED TAX IS AN INCOME TAX AND WHAT PORTION IS A TURNOVER TAX. CAN WE GET AN ANSWER TO THIS PROMPTLY? WE WILL WISH TO STATE EXPLICITLY

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IN THE NOTE ACCOMPANYING THE CONVENTION HOW MUCH OF THE TAX WILL BE IMPOSED. (ORDINARILY, ENTERTAINERS WILL NOT BE SUBJECT TO INCOME TAX IN POLAND BY VIRTUE OF ARTICLES 15 AND 16).

FYI: THEORETICALLY WE COULD SOLVE THE COMMISSION PROBLEM BY ADDING THE "TURNOVER TAX ON COMMISSION AGENTS" TO THE LIST OF TAXES ENUMERATED IN ARTICLE 1, BUT THIS WOULD NOT

BE ACCEPTABLE, SINCE IT WOULD ESTABLISH A PRECEDENT OF GRANTING A CREDIT FOR TAXES OTHER THAN AN INCOME TAX, AND CREATE SERIOUS DIFFICULTIES WITH RESPECT TO OTHER COUNTRIES AS WELL AS OUR SENATE. IF WE IGNORE THIS ISSUE, PROBLEMS MAY ARISE AT A LATER STAGE. THE TAXPAYER WILL CLAIM A CREDIT FOR WHAT HE REGARDS AS A TAX ON HIS INCOME, AND THE INTERNAL REVENUE SERVICE MAY DENY IT ON THE GROUNDS THAT IT IS DESIGNATED A "TURNOVER TAX". IF THE TURNOVER TAX ON COMMISSIONS IS IN ADDITION TO A NET INCOME TAX ON COMMISSION INCOME WE CAN ACCEPT IT WITHOUT AND NEED TO MENTION THIS CASE AND CAN LIMIT THE REFERENCE IN NOTE TO THE ENTERTAINER CASE. END FYI.

FOLLOWING RECEIPT OF YOUR REPLY, WE SHOULD BE ABLE TO PROCEED PROMPTLY TO THE FINAL STAGES OF THE CONVENTION. KISSINGER

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